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In re Application of :
VERSTEGEN et al. :
Application No.: 10/070,523 :
PCT No.: PCT/NL00/00611 :
Int. Filing Date: 01 September 2000 : DECISION
Priority Date: 02 September 1999 :
Attorney Docket No.: 294-123 PCT/US :
For: IMPROVED METHODS AND MEANS FOR :
RETROVIRAL GENE DELIVERY :

This is a decision on applicant's "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally under 37 CFR 1.137(b)" filed in the United States Patent and Trademark Office (USPTO) on 05 August 2002.

BACKGROUND

On 01 September 2000, applicant filed international application No. PCT/NL00/00611 which claimed priority of an earlier European patent application filed 02 September 1999. A copy of the international application had been communicated earlier to the United States Patent and Trademark Office from the International Bureau on 08 March 2001.

On 02 April 2001, a Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 04 March 2002 (02 March 2002 was a Saturday and 03 March 2002 was a Sunday).

On 05 March 2002, applicant filed a transmittal letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter was, *inter alia*, the basic national fee and a copy of the international application.

On 10 May 2002, although the application was abandoned, the DO/EO/US inadvertently mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period.

On 05 August 2002, applicant filed a petition to revive with the petition fee of \$640 for a small entity requesting revival of the application abandoned because applicant failed to provide the full U.S. basic national fee by the thirty month deadline.

DISCUSSION

The deadline for entry into the U.S. national stage for this application was at midnight of 04 March 2002. The request for entry into U.S. national stage was not filed until after the thirty month or on 05 March 2002 and thus, the application was abandoned.

The DO/EO/US inadvertently mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) on 10 May 2002. Because the application was abandoned, the Form 905 was erroneously mailed and is hereby vacated.

With respect to applicants' petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay, the petition must be accompanied by (1) a proper reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply to the filing of a grantable petition pursuant to this paragraph was unintentional", and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Applicant has submitted the proper reply with the submission of the basic national fee, satisfying item (1). With regard to item (2), applicant has provided the appropriate petition fee. As for item (4), since the application was filed after 08 June 1995, no terminal disclaimer is necessary in this application.

With regard to item (3), applicant's statement that "entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

A review of the application file reveals that the required petition fee of \$640 has been charged to applicant's deposit account and all of the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

CONCLUSION

For the above reasons, applicants' petition to revive is **GRANTED**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations to vacate the Notification of Missing Requirements mailed on 10 May 2002 and to issue a new Notification of Missing Requirements indicating that an oath or declaration executed by the inventors and the surcharge for filing the oath or declaration after the thirty month period.



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